

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2004-32

April 29, 2004

PUBLIC UTILITIES COMMISSION  
Investigation of Business Options, Inc.

OBJECTION

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On April 16, 2004, Business Options, Inc.'s (BOI) informed the Commission that it did not intend to participate further in this proceeding and that it would voluntarily resign its certificate to operate in Maine. BOI appears to believe that its unilateral act relieves it of its obligation to appear before this Commission in this proceeding. The Prosecutorial Staff objects. If BOI wishes to waive its rights to conduct discovery and submit prefiled testimony, it may do so. However, BOI's unilateral waiver of its rights in no way limits the Prosecutorial Staff's right to conduct discovery and compel the appearance of BOI witnesses at depositions and/or the hearing in this matter. Indeed, the Prosecutorial Staff had intended to conduct additional discovery in this matter, including noticing a Rule 30(b)(6) deposition of BOI.

Rather than waste Commission resources going through the motions of propounding discovery that BOI has already said it will not respond to, the Prosecutorial Staff requests that the Hearing Examiner issue a ruling specifically admitting into evidence in this proceeding the following documents:

1. Transcripts of the sworn depositions of BOI personnel taken by the FCC during its investigation of BOI. *See In the Matter of Business Options, Inc.*, FCC Docket No. EB-03-85.
  - a. Kurtis Kintzel (7/14/03)
  - b. William Brzycki (7/18/03)
  - c. Elizabeth Rosas (7/15/03)
  - d. Shalanda Robinson (7/17/03)
  - e. Shannon Dennie (7/16/03)
  - f. Lisa Green (7/16/03)
  - g. Gene Chill (7/16/03)

2. BOI's June 19, 2003 Answers to the FCC's Enforcement Bureau's Request for Admissions of Fact and Genuineness of Documents.

Maine Rule of Evidence 804 allows for the admission of a deposition where the witness fails and/or refuses to testify at the hearing and the party against whom it is offered had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination. Here, BOI's April 16<sup>th</sup> letter clearly states that BOI will not participate in this proceeding. Further, BOI's interests in the FCC proceeding are similar to its interests in this proceeding because the FCC's proceeding was based, in part, up slamming complaints from Maine consumers.

Pursuant to section 927 of Chapter 110 of the Commission's Rules, we also request that the Commission take judicial notice of the following documents from the FCC's investigation:

1. *In the Matter of Business Options, Inc.*, Memorandum Opinion and Order, FCC Docket No. EB 03-85 (Dec. 8, 2003).
2. *In the Matter of Business Options, Inc.*, Memorandum Opinion and Order, FCC Docket No. EB 03-85 (Dec. 23, 2003).
3. *In the Matter of Business Options, Inc.*, Enforcement Bureau's Motion for Partial Summary Decision, FCC Docket No. EB 03-85 (Oct. 27, 2003).
4. *In the Matter of Business Options, Inc.*, Joint Request for Adoption of Consent Decree and Termination of Proceeding, FCC Docket No. EB 03-85 (Feb. 17, 2004).
5. *In the Matter of Business Options, Inc.*, Consent Order, FCC Docket No. EB 03-85 (Feb. 20, 2004).

Finally, we believe that the Commission should conduct its hearing in this matter as scheduled. While BOI has stated that it will not participate in this proceeding, we urge the Commission to issue an order compelling BOI's President, Kurtis Kintzel, to

appear at the hearing. If BOI fails to appear, the Commission should issue an Order of Contempt. It is important to go through this process to establish clearly on the record BOI's failure to comply with valid Commission orders. In addition, we expect to urge the Commission to pierce the corporate veil and find Kurtis Kintzel personally responsible for any penalty that the Commission imposes and, thus, Mr. Kintzel should appear at the hearing so that he can be questioned under oath before the Commission.

Respectfully submitted,

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Trina M. Bragdon  
On behalf of the  
Prosecutorial Staff